

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Nebraska )  
Resources Company, LLC, Tulsa, )  
Oklahoma, seeking a Certificate )  
Of Public Convenience and Neces- )  
sity authorizing it to operate )  
as a jurisdictional utility in )  
Nebraska and approval of tariff )

Docket No. NG-0053



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**COMMENTS OF KINDER MORGAN INTERSTATE GAS TRANSMISSION LLC ON  
MARCH 5 ORDER REGARDING SCOPE OF PROCEEDINGS AND  
PROPOSED SCHEDULE**

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Kinder Morgan Interstate Gas Transmission LLC (KMIGT) hereby submits its comments regarding the scope of the proceedings and proposed schedule pursuant to the Hearing Officer's Order Requesting Comments entered on March 5, 2008. KMIGT previously submitted procedural comments in this docket, which it incorporates herein by reference. KMIGT submits these further comments to the Nebraska Public Service Commission ("PSC" or "Commission") to supplement its initial comments in light of the March 3 planning conference and the March 5 Order.

**1. Scope of Hearing.**

A. Phased Proceedings. The February 21, 2008, Order proposed a two phase proceeding with the initial hearing to commence on May 21, 2008. At the March 3 planning conference Nebraska Resources Company, LLC ( "Applicant" or "NRC") stated that if there was a phased procedure it would withdraw its Application. The March 5 Order now proposes to eliminate a phased approach and to instead combine the certification and rate issues in a single hearing. That combined hearing is proposed to commence on the same date that was originally proposed under

the phased approach. This would require intervenors to prepare their cases on both the certification and rates issues within the same amount of time that was originally proposed for just the Phase I issues.

KMIGT continues to believe the phased hearing approach would be administratively efficient and would protect the due process rights of the parties for all of the reasons set forth in its prior comments. Applicant has not presented evidence of any extraordinary or emergency circumstances that would justify sacrificing administrative efficiencies or due process. Applicant has not produced any shipper contracts.

B. Public Convenience. KMIGT's prior comments addressed the scope of proceedings, including the importance of determining, as part of the inquiry into public convenience, whether the proposed services and facilities that would comprise the certificated business are necessary in light of existing facilities and services. Applicant has acknowledged that necessity is a factor to be considered within the scope of this proceeding.

C. Environmental Issues. Although there appear to be no specific provisions of the Nebraska Natural Gas Act which governs environmental issues, the overall concepts of public convenience and public interest are broad enough to cover environmental issues related to PSC certification. In addition to the staff's suggestion that the Commission should determine whether Applicant has provided sufficient information to demonstrate that it *intends* to take all necessary steps to ensure compliance with environmental regulations, Applicant should be required to show that it in fact has taken such steps.

D. Duplicative piping prohibition. In its October 30, 2007, Order in Docket NG-0051/PI-130, ("October 30 Order") the Commission ruled that the double piping prohibition in *Neb. Rev. Stat.* § 66-1852 is broad and would clearly encompass NRC's proposed projects. KMIGT agrees

that the Commission must address in this proceeding whether NRC's project, as proposed, is duplicative and therefore in violation of the double piping law.

E. Just and Reasonable Rates. KMIGT agrees that Applicant must prove that its proposed initial rates are just and reasonable as required by *Neb. Rev. Stat.* § 66-1825.

F. Negotiated Rate Authority. In the October 30 Order the Commission held that rates offered to an LDC would have to be part of a tariff and must be cost based. The Commission must determine in this proceeding whether a jurisdictional utility can charge an LDC customer something other than the tariff rate, including some form of a "negotiated rate", without complying with *Neb. Rev. Stat.* § 66-1855. Applicant argues that LDCs are not high volume ratepayers, and therefore NRC would have no authority under *Neb. Rev. Stat.* § 66-1810 to charge negotiated rates to LDCs. However, NRC has indicated in its Application that it has already negotiated rates with proposed LDC customers. In the March 3 planning conference Applicant further stated with respect to the rates it has negotiated with LDC customers that it was not proceeding in accordance with *Neb. Rev. Stat.* § 66-1855. That statute basically says that the Commission may authorize banded rates, choice programs, or other mechanisms for the determination of rates by negotiation that are consistent with general regulatory principles.

Applicant has cited various FERC precedents for negotiated rate authority that would be applicable to *interstate pipelines*, but which are not applicable to jurisdictional utilities in Nebraska. Applicant has not addressed compliance with the Nebraska legal requirements for jurisdictional utilities. The question that must therefore be determined within the scope of this proceeding is whether Nebraska law can be disregarded by the Applicant with respect to charging tariff rates or negotiated rates to LDCs or other jurisdictional customers in Nebraska. A further question to be determined is whether Applicant has violated Nebraska law to the extent it

may have entered into negotiated rate agreements with jurisdictional customers without having complied with § 66-1855, and without having received Commission authorization for banded rates, a choice program, or other mechanisms for the determination of rates by negotiation that are consistent with general regulatory principles.

G. High Volume Ratepayers and FERC jurisdiction. In its October 30 Order the Commission ruled that the fact that the Commission may lack jurisdiction over a high volume ratepayer itself, that does not preclude the Commission from regulating the jurisdictional utility which provides the service. Notwithstanding this ruling, the Application as filed continues to present this issue, and it therefore needs to be addressed and clearly decided in this proceeding. The issue is this: if Applicant negotiates a rate with a high volume ratepayer pursuant to *Neb. Rev. Stat.* § 66-1810, does that mean that the Commission is thereby divested of its jurisdiction such that Applicant's facilities, services, or rates are no longer "subject to" the Commission's jurisdiction and that Nebraska law would no longer apply to Applicant with respect thereto? Applicant has asserted that the FERC would have jurisdiction rather than this Commission with respect to high volume ratepayers, and that it therefore needs to, and intends to, seek a certificate from the FERC so that FERC, and not the PSC, would have regulatory jurisdiction over NRC with respect to high volume rate payers.. The Commission must determine within the scope of this proceeding whether Applicant's proposed business and regulatory structure concerning high volume ratepayers would violate Nebraska law and circumvent the Commission's jurisdiction.

A further question for consideration within the scope of this proceeding is the impact any decision in this case would have on other jurisdictional utilities in Nebraska. For example, if the Commission were to grant a certificate that accepts NRC's proposed business structure which would remove NRC's service to high volume ratepayers from PSC jurisdiction, such that it

would no longer be subject to PSC jurisdiction, and would instead turn it over to FERC jurisdiction, would that mean that all of the other jurisdictional utilities in Nebraska who serve high volume ratepayers have been doing so unlawfully since they presumably have not obtained the FERC certificate authority that NRC claims is required?

H. Applicability of FERC Regulations. Another issue to be decided with respect to whether the Commission should grant a Certificate of Public Convenience is to what extent the Commission can or should apply FERC or other federal regulations to public utilities in Nebraska. If certificate requirements of the FERC are to be considered and applied in some fashion as Applicant is proposing, it would need to be determined whether Applicant has fully met those requirements, or whether it has cherry picked only those requirements that it believes it can comply with and disregarded others. The FERC's regulations concerning its requirements for a certificate of public convenience and necessity are set forth in 18 CFR Part 157, Subpart A, which was attached to KMIGT's prior comments.

I. Tariffs and Terms and Conditions of Service. Applicant's proposed tariffs, including terms and conditions of service, must be carefully reviewed in this proceeding to determine whether or not they comply with Nebraska law and with the Commission's Rules.

J. Certificate Rights, Obligations, Modifications, and Conditions. If a certificate were to be granted, the Commission would need to address what rights, obligations, modifications and conditions should apply to any certificate authority that may be granted. This would require addressing such questions as: a) if granted the certificate, would Applicant then have a legal obligation to actually construct its proposed facilities and to provide the proposed services necessary to comply with *Neb. Rev. Stat. § 66-1853* which require adequate and sufficient service and facilities ..., b) what would be the time frame within which Applicant would be

required to comply with this law with respect to its proposed initial facilities and services; c) would the certificate provide any exclusive regulated monopoly rights or restrictions to construct facilities or provide services to any specific customers or geographic areas; d) what modifications in proposed facilities, services, rates or tariffs should be required, or what conditions should be imposed, with respect to any certificate that may be granted in order to ensure full compliance with Nebraska law and Commission regulations and orders.

## **2. Proposed Schedule.**

The Application of NRC contains over 600 pages. The Application proposes an extensive new pipeline system and presents numerous factual and legal issues. In addition the Application presents new rates and tariff provisions which must be examined within the scope of this proceeding. There are 8 parties to this proceeding including the Applicant. With respect to the Applicant's case in chief, seven intervening parties plus the Commission and staff are entitled to cross examine all of Applicant's witnesses. At this time, we have no idea how many witnesses Applicant will call.

In addition, the Applicant is entitled to cross examine all of the intervenors' witnesses, which have not yet been identified. The Commission and staff are also entitled to cross examine all of the intervenors' witnesses. Finally, the intervenors are entitled to examine all of each other's witnesses.

All of this will very likely require more than 3 days of hearing. If it turns out that it can all be done in three days that would be great, but if it can't be, it makes sense to schedule the hearing so as to allow two additional days if it becomes necessary in order to accommodate the due process rights of the Applicant and all parties. If the hearing can commence on a Monday,

that would allow for up to 5 consecutive days if needed, which would expedite the proceedings and would minimize travel expense.

In addition, if the Commission ultimately decides against the phasing of the certificate and rate issues, the intervening parties will require, and should reasonably be allowed, at least several more weeks to conduct their discovery and prepare their case for a combined hearing on all issues. It is therefore respectfully requested that the Commission move the hearing dates two weeks from what was originally proposed under the two phase approach.

Finally, the discovery cutoff should not occur until a few days after the filing of rebuttal testimony so as to allow for any follow-up discovery questions related to the rebuttal testimony. In light of these considerations KMIGT suggests the following schedule:

#### **2008**

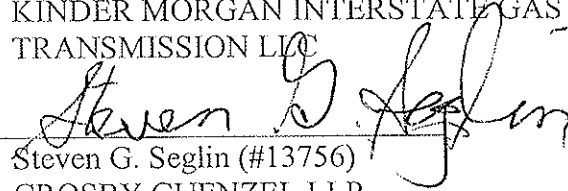
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|-----------------|---|
| <b>March 28</b> | <b>Applicant prefiled direct testimony, witness and exhibit lists</b>   |
| <b>May 16</b>   | <b>Intervenor prefiled testimony, witness and exhibit lists</b>   |
| <b>May 27</b>   | <b>Applicant rebuttal testimony witness and exhibit lists</b>   |
| <b>May 30</b>   | <b>Last day for discovery requests (responses to all discovery requests due within 10 business days of service unless otherwise agreed)</b>   |
| <b>June 6</b>   | <b>Prehearing motions filing deadline</b>   |
| <b>June 16</b>  | <b>Hearing to commence on this date, or on the earliest available date thereafter, and scheduling 3 days for hearing, but allowing for the possibility of 2 additional days to the extent necessary</b> |
- **Post Hearing Initial Briefs due 10 business days after transcript**
  - **Post Hearing Reply Briefs due 10 business days after Initial Briefs**

- Same day service shall be required for all pleadings, testimony, discovery requests and discovery responses. Service may be made by electronic mail, facsimile transmission, or hand delivery.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of March, 2008, a true and correct copy of the foregoing **COMMENTS OF KINDER MORGAN INTERSTATE GAS TRANSMISSION LLC REGARDING SCOPE OF PROCEEDINGS AND PROPOSED SCHEDULE** was sent by email and by U.S. Mail, postage prepaid, to:

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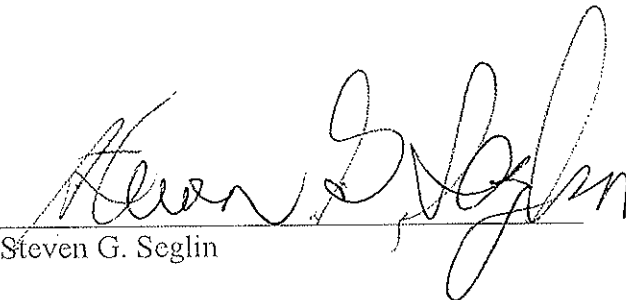
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